IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

S. T.Rev. No. 384 of 2006

TA.374/2005 of S.T.A.TRIBUNAL,ADDL.BENCH,PALAKKAD
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REVISION PETITIONER/RESPONDENT/REVENUE:

STATE OF KERALA,
REP. BY JOINT COMMISSIONER (LAW)
IN-CHARGE,
COMMERCIAL TAXES,
ERNAKULAM.

BY SR. GOVERNMENT PLEADER SRI. MUHAMMED RAFIQ.

RESPONDENT/APPELLANT/ASSESSEE:

M/S. ALUKKKA GOLD PALACE,
EDAPPAL.

BY ADV. SRI.V.P.SUKUMAR

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 10/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, CJ. & K.M. JOSEPH, J.

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S.T.REV. No.384 of 2006

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Dated this the 10th day of December, 2007.

ORDER

H.L.DATTU, CJ,

The State is the revision petitioner in this revision filed under Section 41 of the Kerala General Sales Tax Act (for short 'the Act'). The issue in this revision petition lies in a very narrow compass.

2. The issue is whether the respondent is liable to pay purchase tax under Section 5A of the Act.

3. The assessee is a dealer registered under the Act. It is engaged in the business of purchase and sale of jewellery. In the present case, the assessee has purchased old gold and according to the assessee, it was sold in the same form. However, the assessing authority is of the view that the old gold purchased by the assessee is converted into new gold and then only the sale is effected by the assessee, and therefore, purchase tax is attracted under Section 5A of the Act. To come to the conclusion that the assessee, after purchase of the old gold has converted it into new gold and thereafter effected sale, reasons are not forthcoming in the order passed by the assessing authority. The assessing authority on mere presumptions and assumptions found that the assessee having purchased old gold and has converted it into new gold and thereafter effected sale of the new gold.

4. Section 5A of the Act is as under:

> "**5A. Levy of purchase tax:-** (1) Every dealer who, in the course of his business, purchases from a registered dealer or from any other person any goods, the sale or purchase of which is

liable to tax under this Act, in circumstances in which no tax is payable under sub-sections (1), (3), (4) or (5) of section 5 and either,-

(a) consumes such goods in the manufacture of other goods for sale or otherwise: or

(b) uses or disposes of such goods in any manner other than by way of sale in the State; or

(c) despatches them to any place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce; shall, whatever be the quantum of the turnover relating to such purchase for a year, pay tax on the taxable turnover relating to such purchase for the year at the rates mentioned in Section 5.

(2) Notwithstanding anything contained in sub-section (1), a dealer (other than a casual trader or agent of a non-resident dealer) purchasing goods, the sale of which is liable to tax under Secition5, shall not be liable to pay tax under sub-section (1) if his total turnover for a year is less than two lakh rupees:"

5. A reading of the said provision would clearly indicate that a dealer, in the course of his business purchases from a registered dealer or from any other person any goods, the sale or purchase of which is liable to tax under the Act, in circumstances in which no tax is payable under sub-sections (1), (3), (4) or (5) of Section 5 of the Act and either consumes such goods in the manufacture of goods for sale or otherwise. In the instance case, it is the specific case of the assessee before the assessing authority that it had effected purchase of old gold and thereafter had not consumed such gold in the manufacture of other goods like new gold jewellery for the purpose of sale or otherwise.

6. Purchase tax is attracted only if a dealer purchases certain goods on which no tax is payable under the Act and consumes such goods in the manufacture of other goods for sale or otherwise. In the instance case, as we have already noticed, the case of the assessee is that he purchased old gold and effected

sale in the same form. There is neither consumption nor manufacture of the other goods. In the absence of specific materials in that regard, the assessing authority could not have come to the conclusion that the assessee is liable to pay purchase tax under the provisions of Section 5A of the Act. Keeping in view the possible construction that could be placed, the Tribunal has come to the conclusion that the assessee is not liable to pay purchase tax under Section 5A of the Act.

6. Having gone through the orders passed by the Sales Tax Appellate Tribunal, we are of the opinion that the Tribunal has not committed any error in coming to the conclusion that the assessee is not liable to pay purchase tax under Section 5A of the Act. In view of the above, the revision filed by the State requires to be rejected and it is rejected. The questions of law framed by the revenue are answered against the revenue and in favour of the assessee.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE

K.M. JOSEPH,
JUDGE

sb/DK.